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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,804

04/21/2006

Donna Hui-Ing Hwang

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11/07/2008

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EXAMINER

SOROUGH, LAYLA

ART UNIT

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/576,804	<b>Applicant(s)</b> HWANG ET AL.	
	<b>Examiner</b> LAYLA SOROUGH	<b>Art Unit</b> 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***DETAILED ACTION***

The finality of the office action mailed June 11, 2008 is herewith withdrawn.

The response filed August 11, 2008 presents remarks and arguments submitted to the office action mailed June 11, 2008 is herein acknowledged.

The rejection of claim 12 under 35 U.S.C. 112 second is persuasive. Therefore, the rejection of record is herewith withdrawn.

The rejection of claims 1-6 and 8-13 under 35 U.S.C. 103(a) as being unpatentable over Lennon et al. (US 2003/0165451), supplied by the Applicant, in view of Rabe et al. (US 6,019,962) is persuasive. Therefore, the rejection of record is herewith withdrawn.

The rejection of claim 7 under 35 U.S.C. 103(a) as being unpatentable over Lennon et al. (US 2003/0165451) in view of Rabe et al. (US 6,019,962) and further in view of Suzuki et al. (US 5,219,560) is persuasive. Therefore, the rejection of record is herewith withdrawn.

Upon further consideration of the claims, the following new rejections are made:

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

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which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support for the limitation comprising "contains essentially no emulsifier" as recited in claim 1.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6324703 B1).

The instant claims are drawn to a climaproof cosmetic complex, which comprises (i) 0.1 to 90 % by weight of a gelled oil composition consisting of an oil component and a polymer component, which is a tri- block copolymer, a star polymer, a radial polymer, a multi-block polymer of polystyrene, polyethylene, polyvinyl chloride, polyisoprene, polybutadiene, an ethylene/butadiene copolymer, an ethylene/propylene copolymer, an ethylene/butadiene copolymer, an ethylene-propylene/diene copolymer, a styrene-ethylene/propylene copolymer, a styrene-ethylene/butadiene copolymer, a styrene-isoprene copolymer, a styrene-butadiene copolymer, a styrene-ethylene/propylene-styrene copolymer, a styrene ethylene/butadiene-styrene copolymer, a styrene-isoprene-styrene copolymer, a styrene-butadiene-styrene copolymer, or a mixture

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thereof; (ii) 0.1 to 80 % by weight of a water-repellent cross-linked polyester having a molecular weight of 600 to 8000 and consisting of polyvalent alcohol and dicarbonic acid monomers; (iii) 0.01 to 20 % by weight of a water-absorbing powder having a particle size of 1 to 100 um, which powder is a natural plant powder rich in cellulose, maltodextrine, starch, a starch/polyacrylate copolymer, a synthetic polymer made from an acrylic monomer or mixtures thereof; (iv) 0.01 to 20 % by weight of a thickening agent; and (v) 0.1 to 50 % by weight of an organic solvent, a carrier substance, or a mixture thereof, wherein said cosmetic complex is water resistant and contains essentially no emulsifier.

Chen teaches "novel gels and gel composites for direct contact with the body and capable of substantially preventing the generation moisture from said body in extreme cold weather use (abstract)." The gel compositions of Chen are made of oil (see Examples II-IV) and 100 parts by weight of at least one or more a linear, multi-arm, branched, or star shaped block copolymer or a mixture thereof, said block copolymer having one or more substantially crystalline poly(ethylene) midblock in combination with one or more amorphous midblocks of poly(butylene), poly(ethylene-butylene), poly(ethylene-propylene) or a combination thereof (col 8-9), meeting limitation (i) of claim 1, 2-3, 5 and 13. The reference teaches "as an example, thermoplastic polyurethane (TPU) made with diisocyanates and chain extenders such as 2,2,4-trimethyl-1,3-pentanediol (TMPD) and 2-Butyl-2-ethyl-1,3-pentanediol (BEPD) from saturated hydrocarbon diol KLP L-2203 having a hard segment contents of 22% exhibits clean phase separation of the hard and soft segments with a glass transition of -

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50.degree. C. TPU polyurethane elastomers based on KLP L-2203 diol, MDI with TMPM and BEPD chain extenders at 22% hard segment, 104 isocyanate index, and cured at 105.degree. C. gives 2,430 and 1,160 tensile psi, 1040% and 2180% elongation at break, and modulus at 300% elongation of 670 and 290 psi respectively by the one shot method. Polyurethane elastomers prepared by the one shot method based on KLP L-2203, MDI and TMP at 1.04 NCO/OH ratio having hard segment concentrations of 22%, 33% and 44% give tensile of 2430, 2830 and 2760 psi respectively, elongations at break of 1040%, 830%, and 760% respectively, and modulus at 300% elongation of 670, 1160 and 1360 psi respectively. KLP L-2203 (hydroxyl terminated poly(ethylene-butylene) oligomer (50,000 cps at 20.degree. C.) based TPU's can be mixed with the crystalline block copolymers to form soft fluffy crystal gels within the gel rigidity ranges of the invention. The thermoplastic crystalline triblock and multiblock polyurethane elastomers can also be blended by themselves with components II and III to make strong, elastic fluffy gels of the invention (col 23, lines 33-56)," meeting limitation (ii and iv) of claim 1, 14, and 17. "The hydrophilic patches can be made from any moisture adsorbing material capable of absorbing at least 50% of its weight of water. Such hydrophilic materials include, natural materials (cotton) or water absorbing polymers, hydrogen forming polymers, said tolerant super absorbent, starch modified adsorbents polysaccharide (starch or cellulose modified polymers)." "The hydrophilic patches are held in place by the gel on one side and in direct contact with the skin" (col.6 lines 38-55), meeting limitation (iii) of claim 1 and 16 in part. "Plasticizers (II) particularly advantageous for use in practicing the present

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invention are well known in the art, they include rubber processing oils such as paraffinic and naphthenic petroleum oils, highly refined aromatic-free paraffinic and naphthenic food and technical grade white petroleum mineral oils, and synthetic liquid oligomers of polybutene, polypropene, polyterpene, etc. The synthetic series process oils are high viscosity oligomers which are permanently fluid liquid nonolefins, isoparaffins or paraffins of moderate to high molecular weight," meeting the limitation of claim 4. The compositions can comprise a silicone gel (col 5, lines 19-20), meeting the limitation of claim 7. The fluffy crystal gels can also contain useful amounts of conventionally employed additives such as stabilizers, antioxidants, antiblocking agents, colorants, fragrances, flame retardants, flavors, other polymers in minor amounts and the like to an extent not affecting or substantially decreasing the desired properties. Such additives include oleyl palmitamide, stearyl stearamide, erucyl stearamide, calcium stearate, other metal stearates, waxes (e.g., polyethylene, polypropylene, microcrystalline, carnauba, paraffin, montan, candelilla, beeswax, ozokerite, ceresine, and the like), teflon (TFE, PTFE, PEA, FEP, etc), polysiloxane, etc. the fluffy crystal gel can also contain metallic pigments (aluminum and brass flakes),  $\text{TiO}_2$ , mica, and pigments, phosphorescent pigments, aluminatetrihydrate, antimony oxide, iron oxides ( $\text{Fe}_3\text{O}_4$ ,  $\text{--Fe}_2\text{O}_3$ , etc.), iron cobalt oxides, chromium dioxide, iron, barium ferrite, strontium ferrite and other magnetic particle materials, molybdenum, silicones, silicone fluids, lake pigments, aluminates, ceramic pigments, ironblues, ultramarines, phthalocyanines, azo pigments, carbon blacks, silicon dioxide, silica, clay, feldspar, barium ferrite, wollastonite and the like (col. 28 lines 45-65), meeting the limitation of

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cosmetically acceptable substances of claim 8. Open cell gels are made for direct contact to the skin (col 5, lines 10-31). Additionally, the components incorporated into the gel are microspheres, hence reading on particles with diameters in the microns. The compositions of Chen are water repellant and do not contain emulsifiers.

The reference fails to teach the specific amount of water-repellent crosslinked polyester, water-absorbing powders, thickening agents, organic solvents, cross-linked silicone polymer and the amount of the climaproof complex in the cosmetic. Further, the reference fails to teach the specific size of the water-absorbing polymers.

However, Chen teaches that for the block copolymer gels described herein, including insulating gels, insulating gel composition, and fluffy gels, the tensile strength and tear strength are essentially independent properties. For any particular gel, it can exhibit high tensile strength, but weak tear strength, likewise, a gel can exhibit high tear strength, but low tensile strength. The best tensile and tear strength gels are those having greater crystallinity and elasticity. The tensile of all block copolymer gels including the crystalline gels can be improved by the addition of (1-15% weight) crystalline and semi-crystalline (V) polymers, such as additions of higher density and higher molecular weight (higher melt index) polyethylene and polypropylene. The tear strength can be improved by additions (1-15% weight) of branched, multiblock, radial, star block copolymers (with at least 20% weight and block content), polyethylene copolymers, polypropylene copolymers, thermoplastic polyurethane elastomers, polyphenylene oxide, high molecular weight polystyrene, polycarbonate, and the like. Hence, for example 1-10% weight of polypropylene and 1-10% weight of



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poly(dimethylphenylene)oxide can further improve the tensile and tear strength of the gels of the invention. Likewise combinations of the other polymers described can provide a balanced of better tensile, better tear and better fatigue resistant gel properties. The fluffy crystal gels can also contain useful amounts of conventionally employed additives.

Therefore, the determination of optimal or workable proportions of the ingredients and size of the water-absorbing polymers by routine experimentation is obvious. One having ordinary skill in the art would have been motivated to do this to obtain the desired balance of better tensile, better tear better fatigue resistant and better feel gel properties.

The limitation "which is a composition for skin protection against weather-related environmental damage" is an intended use and does not receive patentable weight in the composition claim 10.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6324703 B1), as applied to claims 1-10, 12-17, and further in view of Lennon et al. (US 2003/0165451—previously presented).

Chen is as applied above.

Although Chen teaches the composition in direct contact to the skin comprising cosmetically acceptable substances (col 5, lines 10-31), the reference fails to specifically teach a foundation, lotion, lipstick, eye shadow, lip gloss, make-up, or rouge.

However, Lennon et al. teaches a similar composition useful for example as a foundation.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the composition of Chen as a foundation. The motivation is because Chen teaches the composition in direct contact to the skin comprising cosmetically acceptable substances and Lennon et al. teaches similar compositions useful in foundations. Therefore, a skilled artisan would have reasonable expectation of successfully producing a cosmetic foundation that is capable of substantially preventing the generation moisture from said body in extreme cold weather use.

### ***Response to Arguments***

Applicant's arguments filed June 11, 2008 have been fully considered.

Applicant's main argument is Lennon does not teach a composition that contains essentially no emulsifying agent. Applicants' argument is persuasive. The Lennon rejection above is solely used to show that it would have been obvious to one of ordinary skill in the art at the time of the invention to use the composition of Chen as a foundation. See new rejections above.

### ***Conclusion***

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax

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phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617